



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CAL

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Order Instituting Rulemaking to Create a
Consistent Regulatory Framework for the
Guidance, Planning, and Evaluation of
Integrated Distributed Energy Resources

Rulemaking 14-10-003
(Filed October 2, 2014)

**REPLY COMMENTS OF THE CALIFORNIA ENERGY EFFICIENCY
INDUSTRY COUNCIL ON REPORT OF COMPETITIVE SOLICITATION
FRAMEWORK WORKING GROUP**

August 31, 2016

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Consistent Regulatory Framework for the
Guidance, Planning, and Evaluation of
Integrated Distributed Energy Resources.

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**REPLY COMMENTS OF THE CALIFORNIA ENERGY EFFICIENCY
INDUSTRY COUNCIL ON COMPETITIVE SOLICITATION FRAMEWORK
WORKING GROUP FINAL REPORT**

I. INTRODUCTION

Pursuant to the Administrative Law Judge’s ruling on March 24, 2016 *Establishing a Work Group to Develop the Competitive Solicitation Framework* and the August 17, 2016 ruling *Confirming Competitive Solicitation Framework Working Group Report Comment Schedule*, the California Energy Efficiency Industry Council (Efficiency Council) respectfully submits these *Reply Comments of the California Energy Efficiency Industry Council on Competitive Solicitation Framework Working Group Final Report* (Report) which was jointly filed by Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) on August 1, 2016 (Report).

The Efficiency Council replies to comments filed by the Natural Resources Defense Council and the Sierra Club (NRDC), PG&E, SCE, SDG&E, Solar City, the Joint Demand Response Parties (JDRP), and Marin Clean Energy (MCE) on August 22, 2016.

These comments are timely filed and served pursuant to the Commission’s Rules of Practice and Procedure.

II. DISCUSSION

A. Double-Counting/Incrementality

NRDC effectively explains the limitations of assessing incrementality for energy efficiency “in a targeted geography” based on the planning process assumptions currently in use and changing demand forecasts necessary to implement SB 350 and AB 802.¹ Consequently they reach a conclusion largely similar to that of the Efficiency Council – Potential Framework 6.² The Framework would provide the certainty needed for market actors to respond to competitive solicitations and significantly reduce the difficult and subjective process of determining incrementality experienced in prior preferred resource and all-source solicitations.

PG&E provided several practical illustrations of how “incrementality might be defined in specific circumstances” and the interaction with existing programs and tariffs³ with which we agree. However, the initial process for determining local need proposes to use local and geographic forecasts that may be reliable for some resources but are of questionable value and accuracy for energy efficiency as discussed in our opening comments⁴ and those of NRDC.⁵ We would propose that PG&E’s “Step 1” to “Determine Local Need”⁶ instead use actual deployment of energy efficiency resources as the basis for incrementality, and exclude the use of planning assumptions.

Solar City also urges caution in addressing incrementality and that this “could easily become the proverbial ‘tail wagging the dog.’” They outline a similar concept to that which we recommend and which we support, “[t]o the extent there is some level of organic growth in the

¹ NRDC Comments at 2-4.

² *Id.* at 5-7.

³ PG&E Comments at 5-6.

⁴ CEEIC Comments at 3-5.

⁵ NRDC Comments at 2-4.

⁶ PG&E Comments at 5.

deployment of DERs that address a given need, those projections should be included as part of the need determination that sets the stage for any specific solicitation. At that point any solicitation should be deemed incremental to what would otherwise occur and any DER solutions that are submitted as part of a solicitation should similarly be deemed incremental.”⁷

We appreciate SCEs recognition that “trying to decipher what DERs are incremental once bids are received”⁸ is not constructive; this is valuable insight given that they have experienced all-source solicitations in recent years through the Preferred Resources Pilot and Local Capacity Requirements Request for Offers. And SCE also expresses concern about the use of forecasting noting “uncertainty in how DER forecasts will be allocated to the granular area associated with a need”⁹ which we interpret as a rejection of the “peanut butter spread” approach discussed in the working group.¹⁰ SCE then appears to propose using forecasts yet to be developed in the DRP proceeding which “should include a detailed assessment of the DERs included in the load forecast.” We are hesitant to rely on and support forecasts that have not yet been developed and “are continuing to evolve”¹¹ as a basis for determining incrementality at this juncture. To do so could risk the participation of critical DER resources such as energy efficiency.

We are also concerned that for energy efficiency, which has such a broad expanse of measures in the marketplace, relying on the utility to define what would be incremental is not practical. We do not see how a utility could effectively inventory every measure or behavioral or operational approach to energy efficiency in a solicitation based on forecasts and then apply time and location to the inventory. The list would be exhaustive. On the other end of the continuum we do not see the value of determining incrementality in a solicitation based on an energy

⁷ Solar City Comments at 5.

⁸ SCE Comments at 4.

⁹ *Id.*

¹⁰ Report at 32.

¹¹ SCE Comments at 4.

efficiency savings goal forecast for a targeted DRP area. Finally, we are concerned that lists of eligible measures that are defined as incremental by the utility and provided in a competitive solicitation would undermine the solicitation by limiting the ability of the market to respond with innovative non-wires alternatives to meet distribution grid needs.

We find that SDG&E has proposed what appears to mimic the approaches of recent all-source procurements which leaves incrementality up to a debate between the bidders and utility – “SDG&E intends its RFOs process to provide ample opportunity for bidders to articulate, and for SDG&E to evaluate, whether DER included in a bid is incremental...”¹² This appears to be the same process upon which the first Edison preferred resource solicitations were based and, as reported in the March 28th workshop,¹³ the results were frustrating and arbitrary.¹⁴ We also think that this can depress the development of the market since bidders would have no foundation upon which to base effective bids. The work that goes into a bid is intensive and substantial and it takes a dedicated effort for a company to participate. The lack of clarity of incrementality suggested by SDG&E discourages market development.

We reiterate the importance of not trying to define what *is* incremental, and instead encourage the Commission to adopt a requirement that the utilities assess and inventory what is *not* incremental. All non-specified DERs would be considered incremental, by default.

B. Pro Forma Contracting

We have two concerns on the opposite sides of the spectrum related to pro forma contracts. First, we share the concerns expressed by the JDRPs that the set of demand response

¹² SDG&E Comments at 8.

¹³ IDER Workshop to Discuss Lessons Learned from Prior Solicitation Experience, March 28, 2016.

¹⁴ *Id.*, Southern California Edison review of LCR RFO, slide #7 which references the challenges of “Incrementality – how to prove a resource is incremental to something that has not yet happened.”

contracts used for reference from a prior SCE solicitation have numerous onerous provisions which created a barrier to participation in prior SCE solicitations.¹⁵ The perspective of JDRP is valuable since some these member companies did participate in the prior solicitations. Second, there were no sample contracts for energy efficiency in the prior SCE solicitations so we are lacking sufficient information upon which to provide perspective for energy efficiency on this issue.

Most concerning is that the contracting process for the competitive solicitations in this proceeding is in a sort of limbo but trying to resolve every issue in workgroups or through comments in this proceeding is not feasible. We are left with generally taking the position that we can support the use of technology-neutral, pro forma contracts. However the solicitations must be specific enough for each technology so that potential bidders are aware of the performance obligations that will apply to specific DERs. As an example, SCE references the measurement and valuation process for energy efficiency in opening comments.¹⁶ If technology-neutral pro forma contracts are used, potential bidders must have technology-specific obligations available in the RFO to ensure the full opportunity to participate in the solicitation.

Clearly there will be more work necessary to develop the contracting process and we hope that the Commission will provide a transparent process for these issues to be developed further. The Commission may want to consider asking each utility to draft and provide its pro forma contract for these solicitations in the near future and that those contracts be distributed to the service list for review and comment.

¹⁵ JDRP Comments at 2-4.

¹⁶ SCE Comments at 15.

C. CCAs as Market Actors

The issue of CCA eligibility to bid into competitive solicitations is advocated by MCE in its opening comments¹⁷ based on a “minority, non-consensus” recommendation from Sub-Team 7.¹⁸ The minority, non-consensus recommendation was briefly discussed by the full working group and there was no consensus.

The concept of participation by non-load serving entities as eligible to bid in competitive solicitations was not considered in the ALJ’s March 24th ruling giving direction to the working group which was limited to seven elements.¹⁹

MCE characterizes CCAs as market participants and argues that CCAs should “be subject to the same eligibility requirements as other market participants, including demonstrating their ability to deliver DER products and services. If awarded the bids, CCAs would receive the same sets of data that are available to market participants.”²⁰

CCAs are not independent market actors, and the role of CCAs should be carefully considered. These entities are cities, counties, and groups of cities and counties. As such they are government institutions providing services for their constituents. The concept of a competitive marketplace typically does not include government institutions competing to provide service against private companies who already provide those services. Governments operate free from competitive forces and without a bottom line.

We also note that CCAs, which sit on the same side of the table as electric utilities, are privy to customer data which other bidders are not. As contractors for electricity generation and administrators of energy efficiency resources they are privy to the details of proposals they

¹⁷ MCE Comments at 2.

¹⁸ Report at 56.

¹⁹ *Administrative Law Judge’s Ruling Establishing a Working Group to Develop the Competitive Solicitation Framework*, March 24, 2016, at 3.

²⁰ MCE Comments at 2.

receive for the delivery of the same services that they would be concurrently bidding against in the competitive solicitations at issue in this proceeding. We find that the CCAs would come into the competitive solicitations with a competitive advantage over truly independent, private market actors and should therefore be ineligible to participate.

As CCAs continue to be defined and developed in the Legislature and by the Commission, perhaps there is a role to consider for CCA contributions at the distribution level on a programmatic or partnership basis with the utility. However, we think that it undermines the marketplace to permit government entities to compete with private companies in competitive solicitations and that this minority, non-consensus recommendation should therefore be rejected by the Commission.

III. CONCLUSION

The Efficiency Council appreciates this opportunity to reply to parties' comments on the Competitive Solicitation Framework Working Group Report.

August 31, 2016

Respectfully submitted,

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